

## United States District Court, Northern District of Illinois

|  |   |  |                   |
|--|---|--|-------------------|
| Name of Assigned Judge or Magistrate Judge | JAMES F. HOLDERMAN  | Sitting Judge if Other than Assigned Judge |                   |
| CASE NUMBER                                | 07 C 6800   | DATE                                       | December 11, 2007 |
| CASE TITLE                                 | Tyrone Owens (#2007-0076179) vs. Sheriff Tom Dart, et al. |  |                   |

## DOCKET ENTRY TEXT:

The plaintiff's motion for leave to proceed *in forma pauperis* [#3] is granted. The court authorizes and orders Cook County Jail officials to deduct \$26.40 from the plaintiff's account, and to continue making monthly deductions in accordance with this order. The clerk shall send a copy of this order to Elizabeth Hudson, Supervisor of Inmate Trust Fund Accounts, Cook County Dept. of Corrections Administrative Office, Division V, 2700 S. California, Chicago, Illinois 60608. The clerk is directed to issue summonses for service on the defendants by the U.S. Marshal. The clerk is also directed to send the plaintiff a magistrate judge consent form and filing instructions along with a copy of this order. The plaintiff's motions for class certification [#5] and for appointment of counsel [#4] are denied, without prejudice.

■ [For further details see text below.]

Docketing to mail notices.

## STATEMENT

The plaintiff, an inmate in the custody of the Cook County Department of Corrections, has brought this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. The plaintiff claims that the defendants, the Cook County Sheriff and the Director of the Cook County Jail, have violated the plaintiff's constitutional rights by: (1) subjecting him to inhumane and unduly restrictive conditions of confinement and (2) retaliating against him for his grievances.

The plaintiff's motion for leave to proceed *in forma pauperis* is granted. Pursuant to 28 U.S.C. § 1915(b)(1), the plaintiff is assessed an initial partial filing fee of \$26.40. The supervisor of inmate trust accounts at the Cook County Jail is authorized and ordered to collect, when funds exist, the partial filing fee from the plaintiff's trust fund account and pay it directly to the clerk of court. After payment of the initial partial filing fee, the trust fund officer at the plaintiff's place of confinement is directed to collect monthly payments from the plaintiff's trust fund account in an amount equal to 20% of the preceding month's income credited to the account. Monthly payments collected from the plaintiff's trust fund account shall be forwarded to the clerk of court each time the amount in the account exceeds \$10 until the full \$350 filing fee is paid. All payments shall be sent to the Clerk, United States District Court, 219 S. Dearborn St., Chicago, Illinois 60604, attn: Cashier's Desk, 20th Floor, and shall clearly identify the plaintiff's name and the case number assigned to this action. The Cook  
(CONTINUED)

mjm

## STATEMENT (continued)

County inmate trust account office shall notify transferee authorities of any outstanding balance in the event the plaintiff is transferred from the jail to another correctional facility.

Under 28 U.S.C. § 1915A, the court is required to conduct a prompt initial review of prisoner complaints against governmental entities or employees. Here, accepting the plaintiff's factual allegations as true, the court finds that the complaint states colorable causes of action under the Civil Rights Act. The Due Process Clause prohibits the imposition of conditions that amount to any kind of "punishment" of a pretrial detainee. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979); *Antonelli v. Sheahan*, 81 F.3d 1422, 1427 (7<sup>th</sup> Cir. 1996). Furthermore, it is well established that inmates may not be punished for exercising their right to file grievances; conduct that might not independently violate the Constitution may form the basis for a retaliation claim when undertaken with an improper, retaliatory motive. *See, e.g., Hoskins v. Lenear*, 395 F.3d 372, 375 (7<sup>th</sup> Cir. 2005). While a more fully developed record may belie the plaintiff's allegations, the defendants must respond to the complaint.

The clerk shall issue summonses for service of the complaint on the defendants. The United States Marshals Service is appointed to serve the defendants. Any service forms necessary for the plaintiff to complete will be sent by the Marshal as appropriate to serve the defendants with process. The U.S. Marshal is directed to make all reasonable efforts to serve the defendants. If either defendant can no longer be found at the work address provided by the plaintiff, the Cook County Department of Corrections shall furnish the Marshal with the defendant's last-known address. The information shall be used only for purposes of effectuating service [or for proof of service, should a dispute arise] and any documentation of the address shall be retained only by the Marshal. Address information shall not be maintained in the court file, nor disclosed by the Marshal. The Marshal is authorized to mail a request for waiver of service to the defendants in the manner prescribed by Fed. R. Civ. P. 4(d)(2) before attempting personal service.

The plaintiff is instructed to file all future papers concerning this action with the clerk of court in care of the Prisoner Correspondent. The plaintiff must provide the court with the original plus a complete judge's copy, including any exhibits, of every document filed. In addition, the plaintiff must send an exact copy of any court filing to the defendants [or to defense counsel, once an attorney has entered an appearance on behalf of the defendants]. Every document filed with the court must include a certificate of service stating to whom exact copies were mailed and the date of mailing. Any paper that is sent directly to the judge or that otherwise fails to comply with these instructions may be disregarded by the court or returned to the plaintiff.

The plaintiff's motion for class certification is denied at this time. Under Rule 23 of the Federal Rules of Civil Procedure, a plaintiff must demonstrate that: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law and fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. The burden is on the party seeking class certification to establish each of these elements. *See, e.g., Williams v. Chartwell Fin. Servs., Ltd.*, 204 F.3d 748, 760 (7<sup>th</sup> Cir. 2000). If each

**(CONTINUED)**

## STATEMENT (continued)

of the prerequisites of Rule 23(a) are met, the moving party also bears the burden of establishing one of the elements contained in Rule 23(b). *Id.*; see also *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 614 (1997). Failure to establish any one of the requirements precludes class certification. *Id.*

In the case at bar, the plaintiff's two-sentence motion does not even mention Rule 23, let alone discuss its applicable criteria. Furthermore, the plaintiff's claim of retaliation militates against class certification: it is logically inconsistent to claim that he was singled out for abuse on account of his grievances, and then to claim that he was treated the same as other, similarly situated detainees.

Another factor weighing against class certification is the adequacy of representation. The qualifications and experience of the person conducting the litigation is a consideration in class certification. *Secretary of Labor v. Fitzsimmons*, 805 F.2d 682, 697 (7<sup>th</sup> Cir. 1986); see also *Jackson v. National Action Financial Services, Inc.*, 227 F.R.D. 284, 289 n. 6 (N.D. Ill. 2005) (Castillo, J.); *Mendez v. M.R.S. Associates*, No. 03 C 6753, 2004 WL 1745779, at \*5 (N.D. Ill. Aug. 3, 2004) (Pallmeyer, J.) Competent representation is crucial because a judgment rendered in a class action suit for injunctive relief is binding on all members of the class. See, e.g., *Pavone v. Aegis Lending Corp.*, No. 05 C 5129, 2006 WL 2536632, at \*3 (N.D. Ill Aug. 31, 2006) (Aspen, J.).

Notwithstanding the plaintiff's significant litigation experience, because a layperson does not ordinarily possess the legal training and expertise necessary to protect the interests of a proposed class, courts are reluctant to certify a class represented by a *pro se* litigant. See, e.g., *Turner-EL v. Illinois Bd. of Educ.*, No. 93 C 4918, 1995 WL 506011, at \*5 (N.D. Ill. Aug. 22, 1995) (Moran, J.); *Lasley v. Godinez*, 833 F. Supp. 714, 715 n. 1 (N.D. Ill. 1993) (Aspen J.) (*pro se* prisoners could not adequately represent class of inmates). Given the plaintiff's *pro se* status, the court concludes that it would be improper to certify a class in this case at this time. If, as the case develops, it appears that the plaintiff's claims have a substantial factual basis demonstrating potential legal merit, the court will consider appointing counsel on the plaintiff's behalf. Whether to seek certification of a class at that time would be a decision for appointed counsel. For these reasons, the plaintiff's motion for class certification is denied, without prejudice.

The plaintiff's motion for appointment of counsel is denied. The plaintiff has failed to show either that he has made reasonable efforts to retain private counsel or that he has been effectively precluded from making such efforts. See *Gil v. Reed*, 381 F.3d 649, 656 (7<sup>th</sup> Cir. 2004), citing *Jackson v. County of McLean*, 953 F.2d 1070, 1072-73 (7<sup>th</sup> Cir. 1992).

As a final concern, the court notes that the plaintiff made a material omission in the complaint he submitted. The court's civil rights complaint form instructed the plaintiff to "List ALL lawsuits you . . . have filed in any state or federal court (including the Central and Southern Districts of Illinois)." (Complaint, p. 5, emphasis in original.) The form goes on to direct, "IF YOU HAVE FILED MORE THAN ONE LAWSUIT, THEN YOU MUST DESCRIBE THE ADDITIONAL LAWSUITS. . . . REGARDLESS OF HOW MANY CASES YOU HAVE PREVIOUSLY FILED, YOU WILL NOT BE EXCUSED FROM FILLING OUT THIS SECTION (CONTINUED)

**STATEMENT (continued)**

COMPLETELY, AND FAILURE TO DO SO MAY RESULT IN DISMISSAL OF YOUR CASE.” (*Id.*) Despite the court’s admonition, the plaintiff mentioned only two of at least seven previous federal cases he has filed, including one case that counts as a “strike” against him. *See Labarbra a/k/a Owens v. Sheahan, et al.*, Case No. 03 C 6410 (N.D. Ill.), dismissed for failure to state a claim by Minute Order of September 16, 2003 (Holderman, J.). The plaintiff’s effective “fraud” on the court justifies “immediate termination of the suit.” *Sloan v. Lesza*, 181 F.3d 857, 859 (7<sup>th</sup> Cir. 1999).

Because the plaintiff’s previous dismissals do not affect his eligibility to proceed *in forma pauperis* in this case, *see* 28 U.S.C. § 1915(g), the court will grant the plaintiff the benefit of the doubt and assume that his omission was due to accidental oversight. But the plaintiff is cautioned that in signing court filings, he is representing that the statements he makes are true to the best of his knowledge. *See* Fed. R. Civ. P. 11. Before submitting any motions or pleadings to the court, the plaintiff should accordingly review the documents carefully to make sure they are complete and accurate. Misrepresentations to the court could lead to sanctions, including dismissal.